

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Lone Pine Television, Inc.	)	CSR-6238-A
	)	
Petition For Modification of the Los Angeles, California DMA	)	
	)	
KVMD Licensee Co., LLC	)	CSR-6199-M
v.	)	
Lone Pine Television, Inc.	)	
	)	
Request for Carriage	)	
	)	
Rancho Palos Verdes Broadcasters, Inc.	)	CSR-6043-M
v.	)	
Lone Pine Television, Inc.	)	
	)	
Petition for Reconsideration	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: November 7, 2003**

**Released: November 14, 2003**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Lone Pine Television, Inc. ("Lone Pine"), filed the above-captioned petition for special relief seeking to modify the Los Angeles, California designated market area ("DMA") with respect to television broadcast stations KVMD, Twentynine Palms, California ("KVMD"), KXLA (Ch. 44), Rancho Palos Verdes, California ("KXLA"), and KJLA (Ch. 57), Ventura, California ("KJLA"). Specifically, Lone Pine requests that KVMD, KXLA and KJLA be excluded, for purposes of the cable television mandatory broadcast signal carriage rules, from its cable systems serving Lone Pine and Alabama Hills, California. KVMD Licensee Co., LLC, licensee of KVMD, and Rancho Palos Verdes Broadcasters, Inc., licensee of KXLA, filed a joint opposition to the petition to which Lone Pine replied. No opposition from KJLA was received. In associated filings, KVMD filed a must carry complaint against Lone Pine for its failure to carry its signal on the Lone Pine and Alabama Hills cable systems and Lone Pine has a pending petition for reconsideration of the Bureau's decision in *Rancho Palos Verdes Broadcasters, Inc. v. Lone Pine Television, Inc.*, which granted KXLA's complaint seeking carriage on Lone Pine's systems in the subject communities.<sup>1</sup> KVMD's complaint is unopposed. An opposition to Lone Pine's petition for

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<sup>1</sup>18 FCC Rcd 7068 (2003).

reconsideration was filed on behalf of KXLA to which Lone Pine replied. We are consolidating these cases in order to determine the signal carriage rights of KVMD and KXLA on the cable systems in question. For the reasons stated below, we grant Lone Pine's market modification and dismiss both KVMD's must carry complaint and Lone Pine's petition for reconsideration.

## II. BACKGROUND

2. Pursuant to Section 614 of the Act and the rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues* ("Must Carry Order"), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market.<sup>2</sup> A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.<sup>3</sup> A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Each county in the United States is assigned to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.<sup>4</sup>

3. Under the Act, however, the Commission is directed to consider changes in market areas. Section 614(h)(1)(C) provides that the Commission may:

... with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section.<sup>5</sup>

In considering such requests, the 1992 Cable Act provides that:

... the Commission shall afford particular attention to the value of localism by taking into account such factors as –

- (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;
- (II) whether the television station provides coverage or other local service to such community;
- (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this

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<sup>2</sup>8 FCC Rcd 2965, 2976-2977 (1993).

<sup>3</sup>Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. § 534(h)(1)(C). Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. 47 C.F.R. § 76.55(e); see *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999) ("Modification Final Report and Order").

<sup>4</sup>For a more complete description of how counties are allocated, see Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

<sup>5</sup>47 U.S.C. § 534(h)(1)(C).

section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community;

(IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.<sup>6</sup>

The legislative history of the provision states that:

where the presumption in favor of [DMA] carriage would result in cable subscribers losing access to local stations because they are outside the [DMA] in which a local cable system operates, the FCC may make an adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the area in which they serve and which form their economic market.

\* \* \* \*

[This subsection] establishes certain criteria which the Commission shall consider in acting on requests to modify the geographic area in which stations have signal carriage rights. These factors are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market.<sup>7</sup>

In adopting rules to implement this provision, the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market.<sup>8</sup>

4. In the *Market Modification Final Report and Order*, the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for modification petitions that requires the following evidence be submitted:

(A) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.

(B) Grade B contour maps delineating the station's technical service area and showing the location of the cable system headends and communities in relating to the service areas.

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<sup>6</sup>*Id.*

<sup>7</sup>H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

<sup>8</sup>*Must Carry Order*, 8 FCC Rcd at 2977 n.139.

Note: Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.<sup>9</sup>

- (C) Available data on shopping and labor patterns in the local market.
- (D) Television station programming information derived from station logs or the local edition of the television guide.
- (E) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.
- (F) Published audience data for the relevant station showing its average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.<sup>10</sup>

Petitions for special relief to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be refiled at a later date with the appropriate filing fee. The *Market Modification Final Report and Order* provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant.

5. Pertinent to KVMD, in *Carriage of Digital Television Broadcast Signals First Report and Order* (“*DTV Must Carry Report and Order*”), the Commission concluded that under Section 614(a) of the Act, a digital-only television station has mandatory carriage rights, and amended the rules accordingly.<sup>11</sup> The Commission has established a framework for analyzing market modifications for digital television stations.<sup>12</sup> The Commission stated that Nielsen’s market designations, publications, and assignments for the analog television market should continue to be binding on broadcast stations transitioning to digital television broadcasting. The presumption is that the market of the station’s digital signal is coterminous with the station’s market area for its analog signal during the transition period.<sup>13</sup>

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<sup>9</sup>The Longley-Rice model provides a more accurate representation of a station’s technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving mountainous terrain or other unusual geographical features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local service to a community under factor two of the market modification test.

<sup>10</sup>47 C.F.R. § 76.59(b).

<sup>11</sup>See 16 FCC Rcd 2598, 2606 (2001); 47 C.F.R. § 76.64(f)(4). The Commission has held that a television station may elect to have its digital signal carried in an analog format by local cable systems. The Commission concluded that for purposes of supporting the conversion to digital signals and facilitating the return of the analog spectrum, a television station may demand that one of its high definition digital (“HDTV”) or standard definition digital (“SDTV”) television signals be carried on the cable system for delivery to subscribers in an analog format. *DTV Must Carry Report and Order*, 16 FCC Rcd at 2630.

<sup>12</sup>See *Id.* at 2635-36.

<sup>13</sup>We note that in adopting technical rules for the digital transmission of broadcast signals, the Commission attempted to insure that a station’s digital over-the-air coverage area would replicate as closely as possible its current  
(continued...)

The Commission also found that the statutory factors in Section 614(h), the current process for requesting market modifications, and the evidence needed to support such petitions, will be applicable to digital television modification petitions during the transition period when television stations broadcast both an analog signal and a digital signal.<sup>14</sup> The Commission recognized that the technical coverage area of a digital television signal may not exactly replicate the technical coverage area of the analog television signal. Therefore, in deciding DTV market modification cases, the Commission stated that it would take into consideration changes in signal strength and technical coverage because of new digital television channel assignments and power limits. It concluded that all other matters concerning the modification process for digital television signals will be decided on a case-by-case basis.<sup>15</sup>

### III. DISCUSSION

#### A. KVMD

6. KVMD states that it is an authorized full service digital UHF station whose city of license is Twentynine Palms, California, a community located in San Bernadino County, California.<sup>16</sup> KVMD further states that its DTV facility is authorized to broadcast on Channel 23 and commenced operations, pursuant to special temporary authority, on July 29, 2002. KVMD adds that on June 1, 2003, it discontinued analog operations, and commenced digital-only operations, pursuant to Commission authorization.<sup>17</sup> KVMD states that the Station and Lone Pine's cable systems are both located in the Los Angeles DMA. KVMD states that by certified letters dated May 5, 2003, it elected and sought mandatory carriage on Lone Pine's cable systems. The Station asserts that Lone Pine failed to respond to KVMD's request within the required 30 days of receipt pursuant to Section 76.61(a)(2) of the Commission's rules.<sup>18</sup> Lone Pine subsequently filed a petition for special relief seeking modification of KVMD's market. Lone Pine's market modification arguments are set forth below.

7. **History of carriage.** Lone Pine asserts that KVMD's digital signal has no history of carriage on its cable systems.<sup>19</sup> Lone Pine states that this lack of carriage is not surprising considering that KVMD is located over 200 miles away and cannot deliver a good quality signal to Lone Pine's principal headend.<sup>20</sup> In its response, the Station asserts that two other cable operators, Adelphia Communications ("Adelphia") and Charter Communications ("Charter") have "understandings" with KVMD to carry its signal on their respective cable systems in the Los Angeles DMA.<sup>21</sup> According to KVMD, Adelphia's and Charter's carriage of its signal demonstrates that Lone Pine's refusal to carry KVMD is not attributable to the station's lack of appeal to viewers in the communities or the location of

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over-the-air analog coverage area. See *Sixth DTV Report and Order*, 12 FCC Rcd 14588, 14605 (1997).

<sup>14</sup>See *DTV Must Carry Report and Order*, 16 FCC Rcd at 2636.

<sup>15</sup>*Id.*

<sup>16</sup>Twentynine Palms is on the eastern edge of the Los Angeles DMA.

<sup>17</sup>KVMD Must Carry Complaint at 2, citing *KVMD(TV), Twentynine Palms, CA*, DA 03-1481 (rel. May 1, 2003).

<sup>18</sup>47 C.F.R. § 76.61(a)(2).

<sup>19</sup>Modification at Exhibit 1.

<sup>20</sup>*Id.* at 9.

<sup>21</sup>Opposition at 7 and Exhibit C.

the communities outside the scope of the station's market.<sup>22</sup> Lone Pine asserts that KVMD's carriage by Adelphia and Charter is totally irrelevant because the closest of the Adelphia and Charter communities is well over 100 miles from the communities at issue.<sup>23</sup> Lone Pine states that this only support's its argument that its communities are outside of KVMD's market. Finally, Lone Pine argues that there are no economic, shopping or labor connections between KVMD and the communities due to the geographic distance between Twentynine Palms and the communities.<sup>24</sup>

8. **Local Service.** Lone Pine asserts that KVMD fails to provide any coverage or local service to the subject communities.<sup>25</sup> Lone Pine states its communities are approximately 120 miles outside the nearest edge of KVMD's digital service contour.<sup>26</sup> Moreover, Lone Pine states that its communities are over 200 miles distant from Twentynine Palms, KVMD's city of license, and the Commission has previously excluded communities in market modification cases where the distances were considerably shorter.<sup>27</sup> Lone Pine points out that the subject communities are also separated from KVMD by geographic barriers such as the Mojave Desert, Inyo National Forest, Sequoia National Forest, Red Rock Canyon, and the Sierra Nevada Mountains.<sup>28</sup> In response, KVMD states that, under standards developed by the Commission in the analog context, Grade B coverage has generally been held to demonstrate a station's service to cable communities and to reflect a station's natural geographic market.<sup>29</sup> KVMD concedes that it does not provide digital service and that the communities are more than 100 miles distant, but it commits to provide, via alternative means of signal delivery, 41 dBu signal strength coverage to the cable communities.<sup>30</sup> KVMD adds that, as evidenced by Adelphia's and Charter's willingness to carry its signal, KVMD is able to serve Lone Pine with a good quality signal.<sup>31</sup> Lone Pine argues that KVMD's ability to deliver its signal via satellite does not negate the fact that the subject communities are so far removed from KVMD's service area that they are not part of the station's market.<sup>32</sup>

9. Lone Pine argues that KVMD does not carry any news, public affairs or public service programming and does not broadcast programming of specific interest to residents of the cable

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<sup>22</sup>*Id.* at 8.

<sup>23</sup>Reply at 7.

<sup>24</sup>Modification at 13.

<sup>25</sup>Modification at 9.

<sup>26</sup>*Id.*, citing contour maps appended to Mediacom California LLC market modification (CSR-6222-A).

<sup>27</sup>*Id.* at 10, citing *Time Warner Entertainment/Advance Newhouse Partnership*, 18 FCC Rcd 4990 (2003) (105-118 miles); *Avenue TV Cable Service*, 16 FCC Rcd 16436 (2001) (85 miles); *Greater Worcester Cablevision, Inc.*, 13 FCC Rcd 22220 (1998) (39-70 miles); *Mid-Hudson Cablevision, Inc.*, 15 FCC Rcd 5011 (2000) (31-70 miles).

<sup>28</sup>*Id.* at 11 and Exhibit K.

<sup>29</sup>Opposition at 8, citing *First Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 2598, 2977 (2001); *see also* 47 C.F.R. § 73.622(e).

<sup>30</sup>Opposition at 8-9.

<sup>31</sup>KVMD states that Adelphia currently carries its signal on ten cable system and has agreed to carry it on substantially all of the Adelphia's systems by November 2003. *See* Opposition at Exhibit C, Declaration of Mr. Ronald L. Ulloa, President of KVMD.

<sup>32</sup>Reply at 7.

communities.<sup>33</sup> KVMD counters that its programming has a “distinct nexus” to the cable communities at issue.<sup>34</sup> It asserts that it carries a substantial amount of programming about horses and that there are many horse enthusiasts throughout the Los Angeles DMA.<sup>35</sup> KVMD also states that it carries informational and “inspirational” local programming such as “Working Wardrobe,” “This Week in Garden Grove,” “City Beat,” “Inland Empire Alive” for people living in San Bernadino and Riverside Counties.<sup>36</sup> KVMD adds that it expects to launch a new locally produced news program directed at viewers throughout the Los Angeles DMA. Lone Pine asserts that KVMD has not provided sufficient evidence in the record to support its claim that the Station’s programming serves the interests of viewers in the cable communities.<sup>37</sup>

10. **Carriage of other local television stations.** Lone Pine asserts that it carries other Los Angeles DMA television stations that cover news, sporting events, and issues of concern to the cable communities.<sup>38</sup> KVMD states that Lone Pine has made no showing that it currently carries any broadcast television station that offers the unique programming provided by KVMD, or that promises to deliver the multicultural news and community interest stories that the Station plans to offer in the near future.<sup>39</sup>

11. **Viewing patterns.** Lone Pine asserts that KVMD’s signal failed to achieve reportable off-air viewing in Inyo County, where the communities are located.<sup>40</sup> Lone Pine asserts that the dearth of viewers is consistent with the distance between the communities and KVMD. KVMD argues that it should be treated as a new station for market modification purposes because it is under new ownership and because it is a new digital-only station.<sup>41</sup> Based on these facts, KVMD states that viewership levels should not be accorded substantial weight in this proceeding.

12. Section 614(h)(1)(C) of the Communications Act authorizes the Commission to include or exclude particular communities from a television station’s market for the purpose of ensuring that a television station is carried in the areas which it serves and which form its economic market.<sup>42</sup> Section 614(h)(1)(C)(i) specifically and unambiguously directs the Commission, in considering requests for market modification, to afford particular attention to the value of localism by taking such matters into account.<sup>43</sup> These principles apply to all television stations without regard to the mode in which the station broadcasts. KVMD urges us to adopt a new paradigm for market modification cases involving digital television stations. It asks us to abandon precedent and order a cable operator to carry a digital television signal if a subject television station promises to provide a good quality signal to the cable system’s principal headend. KVMD’s proposal is directly contrary to Section 614(h).

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<sup>33</sup>Modification at 11.

<sup>34</sup>Opposition at 11 and Exhibits D-F.

<sup>35</sup>*Id.*

<sup>36</sup>*Id.*

<sup>37</sup>Reply at 8.

<sup>38</sup>Modification at 12.

<sup>39</sup>Opposition at 15.

<sup>40</sup>Modification at Exhibit N.

<sup>41</sup>Opposition at 15-16.

<sup>42</sup>47 U.S.C. § 534(h)(1)(C).

<sup>43</sup>47 U.S.C. § 534(h)(1)(C)(i).

13. Furthermore, the Commission has found that the statutory factors in Section 614(h), the current process for requesting market modifications, and the evidence needed to support such petitions, are applicable to digital television modification proceedings during the transition period.<sup>44</sup> KVMD's proposal ignores the directives the Commission established over two years ago. KVMD did not petition the Commission to reconsider its conclusions on the application of Section 614(h) to digital television stations. It is inappropriate for KVMD to attempt to do so here, or in other market modification proceedings.

14. Lone Pine has presented evidence in the record to support its request. In this matter, KVMD has no history of carriage and no discernable viewership in the communities at issue. The record evidence also indicates that KVMD's analog signal, when it was broadcasting, was not carried and did not have viewership in the cable communities. Although KVMD claims to have carriage "understandings" in place with Adelphia and Charter, KVMD only provides a projected commencement schedule for Adelphia that indicates carriage of KVMD in various communities in the Los Angeles DMA beginning in August 2003 and ending in November 2003.<sup>45</sup> It is not clear whether or where such carriage has actually commenced. Moreover, none of the Adelphia communities listed appears to be adjacent, or geographically proximate, to the Lone Pine communities. It is also evident that KVMD is geographically distant from the communities, that its digital coverage area falls far short of the cable communities, and that the Station is separated from the communities by mountain ranges, desert, and political boundaries. KVMD has also failed to rebut Lone Pine's showing with sufficient evidence that its programming has a distinct nexus to the cable communities. Moreover, we cannot credit KVMD's promised future local programming for purposes of the instant modification proceeding. Lone Pine has shown, however, that there are numerous local television stations that it currently carries that provide specific programming of interest to the cable communities.<sup>46</sup> In conclusion, relying on case precedent for analog television station market modifications, the grant of Lone Pine's market modification request would effectuate the purposes of Section 614(h) of the Act. Because we find that KVMD is not local for mandatory carriage purposes, its must carry complaint is dismissed as moot.

## **B. KXLA and KJLA**

15. **History of Carriage.** Lone Pine states that neither KXLA nor KJLA have a history of carriage on the systems.<sup>47</sup> Lone Pine asserts that this is not surprising since KXLA is located approximately 200 miles away and KJLA approximately 175 miles precluding either station from delivering a good quality signal.<sup>48</sup> In opposition, KXLA argues that it has only been operating for approximately two years and the Commission has repeatedly held with respect to new stations that lack of historical carriage is of little or no relevance in modification cases because, otherwise, such stations would be prevented from ever getting carriage.<sup>49</sup> KXLA states that the Commission has also recognized that "because of their limited audience," specialty stations, such as KXLA, "have not been widely carried

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<sup>44</sup>See *DTV Must Carry Report and Order*, 16 FCC Rcd at 2636.

<sup>45</sup>See Opposition at Exhibit C.

<sup>46</sup>See Modification at 12.

<sup>47</sup>Modification at Exhibits A and P.

<sup>48</sup>*Id.* at 3 and 15.

<sup>49</sup>Opposition at 17, citing *Time Warner Entertainment Co., L.P.*, 12 FCC Rcd 22069, 22077 (1997); *Horizon Broadcasting Corporation*, 12 FCC Rcd 11634, 11638 (1997); *Time Warner Cable*, 11 FCC Rcd 8047, 8053-54 (1996).

by cable operators absent must carry obligations.”<sup>50</sup> KXLA maintains that not only does Lone Pine’s carriage of other stations broadcasting from the same geographic area as its station (*i.e.*, Mt. Wilson) weigh in favor of KXLA’s carriage in the communities, but the situation is analogous to that described in *Comcast Cablevision of Danbury, Inc.*, where the Commission denied a request for exclusion because the station in question was part of the “hub” of the New York DMA.<sup>51</sup> KXLA asserts that both Mt. Wilson and its community of license, Rancho Palos Verdes, can be considered hubs of the City of Los Angeles. Lone Pine argues in reply that the Commission previously rejected KXLA’s “hub” argument in its decision in *Time Warner Entertainment/Advance-Newhouse Partnership d/b/a Time Warner* based on geographic distance, lack of Grade B coverage, multiple geographic barriers and no carriage of any other station licensed to Rancho Palos Verdes.<sup>52</sup> In this instance, Lone Pine states that along with the other factors enumerated, the distances between the communities are even greater.<sup>53</sup>

16. **Local Service.** Lone Pine asserts that, because of the extreme distance of the stations, KXLA and KJLA do not provide any coverage or local service to the subject communities.<sup>54</sup> Lone Pine points out that the Commission has repeatedly emphasized that the failure to provide Grade B coverage is an important factor in a market modification analysis.<sup>55</sup> Lone Pine states that its communities are approximately 120 and 125 miles, respectively, outside the nearest edge of KXLA’s and KJLA’s Grade B contours.<sup>56</sup> Lone Pine states that, in addition to mileage, its communities are separated from Rancho Palos Verdes and Ventura, California by geographic barriers such as the San Gabriel Mountains, Tehachapi Mountains, Mojave Desert, Inyo National Forest, Red Rock Canyon, Angeles National Forest, Sequoia National Forest, Desert Tortoise National Area, Antelope Valley, the Sierra Nevada Mountains and the City of Los Angeles.<sup>57</sup> KXLA argues that the instant proceeding presents a situation in which the Commission must look to factors beyond the technical Grade B contour requirement in considering coverage and local service. It points out that the Commission has stated that while “as a general matter Grade B coverage demonstrates service to cable communities and serves as a measure of a station’s natural economic market, it is not an exclusive test.”<sup>58</sup> KXLA maintains that an emphasis on narrow geographic considerations is inappropriate here where the Asian-American communities that serve as KXLA’s audience “form communities that cross city and county lines, transforming the entire Los Angeles market into groups of interrelated markets.”<sup>59</sup> Lone Pine argues that the insurmountable distance

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<sup>50</sup>*Id.*, citing *CoxCom, Inc.*, 17 FCC Rcd 17192, 17195 (2002).

<sup>51</sup>*Id.* at 17-18, citing 18 FCC Rcd 274, 278 (2003).

<sup>52</sup>Reply at 3, citing 18 FCC Rcd 4490 (2003).

<sup>53</sup>*Id.* Lone Pine points out that in *Time Warner* the distances were 105-118 miles while here the distance is 200 miles.

<sup>54</sup>Modification at 4 and 15.

<sup>55</sup>*Id.*, citing *Dynamic Cablevision of Florida*, 11 FCC Rcd 9880 (1992); *Rancho Palos Verdes Broadcasters, Inc.*, 18 FCC Rcd 9589 (2003).

<sup>56</sup>*Id.*

<sup>57</sup>*Id.* at 5 and 16.

<sup>58</sup>Opposition at 21, citing *Suburban Cable TV Co., Inc.*, 16 FCC Rcd 10790, 10797 (2001) (citing *Must Carry Order*, 8 FCC Rcd at 2977).

<sup>59</sup>*Id.*, citing *Fouce Amusement Enterprises, Inc.*, 10 FCC Rcd 668, 670 (1995).

and geographic barriers in this case cannot be disregarded.<sup>60</sup>

17. Lone Pine argues that KXLA and KJLA do not carry any news, public affairs or public service programming and do not broadcast programming of specific interest to the residents of the cable communities.<sup>61</sup> Lone Pine also argues that there is no commercial connection between the cable communities and Rancho Palos Verdes and Ventura.<sup>62</sup> KXLA argues that, in addition to daily children's programming, it provides unique locally-focused Asian-American language programming that Lone Pine should utilize for the benefit of its Asian-American subscribers.<sup>63</sup> Lone Pine states that KXLA offers no evidence that it carries programming that is tailored to the subject communities.<sup>64</sup> Lone Pine argues, however, that KXLA reliance on its Asian-American programming is irrelevant in this case because, according to 2000 Census data, Asians constitute a mere 1 percent of Lone Pine's population which is far below the 10.9 percent figure for the rest of California.<sup>65</sup>

18. **Carriage of other local television stations.** Lone Pine states that it carries many other Los Angeles DMA television stations that carry programming that covers news, sporting events and issues of concern to the communities.<sup>66</sup> KXLA states that Lone Pine has made no showing that it currently carries any broadcast television stations that offer the unique programming provided by KXLA.<sup>67</sup>

19. **Viewing Patterns.** Lone Pines asserts that KXLA's and KJLA's signals failed to achieve any reportable off-air viewing in Inyo County, where the communities are located.<sup>68</sup> Lone Pine argues that the dearth of viewers is consistent with the distance between the communities and the stations. KXLA states that because it has only been on-the-air for two years it is still in the process of building its viewership. The Commission has recognized that it normally takes up to 3 years for a station to build viewership within its licensed area.<sup>69</sup> KXLA maintains that, because of its specialty station status, the mitigating factors that apply to its lack of historic carriage should apply equally here.<sup>70</sup>

20. With regard to KXLA and KJLA, Lone Pine has presented evidence to support its request. KXLA and KJLA have no history of carriage and no discernable viewership in the communities at issue. It does not appear that any proximate cable systems carry either KXLA or KJLA. In the case of KXLA, as a relatively new specialty station, we do not afford considerable weight to this deficiency. However, it is clear that KXLA, as well as KJLA, are geographically distant from the communities at 200 and 175 miles, respectively; that their predicted Grade B contours fall far short of the communities; and

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<sup>60</sup>Reply at 4.

<sup>61</sup>Modification at 5-6 and 17.

<sup>62</sup>*Id.* at 8 and 19.

<sup>63</sup>Opposition at 22 and Exhibit K.

<sup>64</sup>Reply at 5.

<sup>65</sup>*Id.* at Exhibit A.

<sup>66</sup>Modification at 7 and 18.

<sup>67</sup>Opposition at 22-23.

<sup>68</sup>Modification at Exhibits G and V.

<sup>69</sup>Opposition at 24, citing *Avenue TV Cable Services, Inc.*, 16 FCC Rcd 16436, 16445 (2001).

<sup>70</sup>*Id.*, citing *The Chronicle Publishing Company*, 10 FCC Rcd 9474, 9482 (1995).

that the stations are separated from the communities by numerous geographic barriers such as the San Gabriel Mountains and the Inyo National Forest. These factors also tend to explain the history of non-carriage of the stations on Lone Pine's cable systems and strongly indicate that Lone Pine and Alabama Hills are too distant to properly be a part of KXLA's and KJLA's market. KXLA has argued that all of these factors are irrelevant because of the fact that it provides Asian-language programming for the benefit of the Asian-American population throughout the Los Angeles DMA and it cites *Fouce Amusement* in support.<sup>71</sup> However, in *Fouce Amusement*, the Commission noted that the station in question provided the only locally-produced programming of particular appeal to the Asian community.<sup>72</sup>

In the instant matter, KXLA fails to provide any specific information or documentation regarding the orientation of its programming to the communities of Lone Pine and Alabama Hills. Because we find that KXLA is not local for mandatory carriage purposes, Lone Pine's petition for reconsideration of the Bureau's grant of KXLA's must carry complaint against Lone Pine is dismissed as moot. In addition, the Bureau's action granting KXLA's complaint against Lone Pine for carriage in Lone Pine and Alabama Hills is rescinded.

#### IV. ORDERING CLAUSES

21. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 534(h), and Section 76.59 of the Commission's rules, 47 C.F.R. § 76.59, that the captioned petition for special relief (CSR-6238-A), filed by Lone Pine Television, Inc., **IS GRANTED**.

22. **IT IS FURTHER ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and Section 76.61 of the Commission's rules, 47 C.F.R. § 76.61, that the must carry complaint filed by KVMD Licensee Co., LLC (CSR-6199-M) **IS DISMISSED**.

23. **IT IS FURTHER ORDERED**, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the petition for reconsideration filed by Lone Pine Television, Inc. (CSR-6043-M) **IS DISMISSED**.

24. **IT IS FURTHER ORDERED**, that the Bureau's April 11, 2003 action (DA 03-1154) granting the must complaint of Rancho Palos Verdes Broadcasters, Inc. (CSR-6043-M) **IS HEREBY RESCINDED**.

25. These actions are taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>73</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division  
Media Bureau

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<sup>71</sup>Opposition at 21.

<sup>72</sup>The Commission's ruling in *Fouce Amusement* was not decided on the issue of foreign-language programming. In that matter, *inter alia*, the cable communities were located within the City Grade coverage of the station at issue. See *Fouce Amusement*, 10 FCC Rcd at 671.

<sup>73</sup>47 C.F.R. § 0.283.